IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6879 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

Manharbhai Ambalal Patel

V/s.

Bapunagar Vidyotajak Trust & Ors.

Appearance:

MR CHETAN PANDYA for MR SV RAJU for the petitioner

None present for the respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 12/06/2000

C.A.V. JUDGEMENT

1. Heard the learned counsel for the petitioner and perused the Special Civil Application.

2. The petitioner who was working as Assistant Primary School Teacher in respondent no.2 school, a government recognised private primary school and run and administered by respondent no.1 trust had filed Civil

Suit no.2087 of 1985 in the City Civil Court at Ahmedabad in the matter of his termination of services. This suit was transferred to the Gujarat Primary Education Tribunal at Ahmedabad where it was registered as Application No.32 of 1987. The tribunal suo motu without hearing the petitioner stayed further proceedings of the application by order dated 26th December, 1998 passed in the some other application i.e. Application no.83 of 1987. Hence, this Special Civil Application in this court.

3. Section 40 (G) of the Bombay Primary Education Act bars the jurisdiction of the Civil Court to settle, decide or deal with any question which by or under the chapter, wherein sect.40(G) is there, is required to be settled, decided or dealt with by the Tribunal. Sub-sect.2 of this section provides that all the suits and proceedings between the manager of a recognised Private Primary School and a teacher in service of such school relating to the disputes connected with the conditions of the service of such teacher, which are pending in any Civil Court on the date of the commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance Act 1986 shall be transferred to and continued before the Tribunal.

4. The Tribunal was constituted vide notification dated 23rd January, 1987, but this notification was not gazetted which has admittedly been done on 26th November, 1987. The suit was transferred to the Tribunal by the City Civil Court prior to 26th November, 1987 and the Tribunal has taken the view that on the day when the suit was transferred, the Tribunal was not constituted and having no jurisdiction in the matter, accordingly, the proceedings of the application were stayed. The Tribunal, while passing the order, has not considered that after the constitution of the Tribunal vide notification dated 26th November, 1987, the suit has to be transferred back to it, and the day on which the impugned order was passed by the Tribunal, the gazette notification for the constitution of the Tribunal had already been made. The Tribunal has taken a hyper-technical view while dealing with the matter. It is not considered that the jurisdiction of the Civil Court has been barred under section-40G (2) of the Act and all the suits which are pending on the date of the constitution of the Tribunal, are to be transferred to the Tribunal. Even if the view taken in the matter by the Tribunal is accepted, it will be only an empty formality to send the application back to the Civil Court and in turn, the Civil court has again to transfer it to the Tribunal. The approach of the Tribunal in the matter

is highly perverse.

5. In the result, this Special Civil Application succeeds and is hereby declared that the suit of the petitioner transferred to the Tribunal and registered as Application No.30 of 1987, is triable by the Tribunal. The application is of year 1987. The learned Tribunal is directed to decide this application within three months from the date of receipt of the writ of this order. Rule is made absolute. No order as to cost.

(S.K. KESHOTE, J.)

(Kamlesh)